

UNDERTAKING

THIS UNDERTAKING is given to the **DIRECTOR OF CONSUMER AFFAIRS VICTORIA** (the **Director**) by Mr Surinder Sarain (**Mr Sarain**).

BACKGROUND

1. The Sarain Pty Ltd, ACN 143 731 006 (The Sarain):
 - 1.1. Is an Australian proprietary company limited by shares which was registered on 28 May 2010;
 - 1.2. Was issued a corporate estate agent's licence [Licence No. 075147L] under the *Estate Agents Act 1980 (EAA)* by the Business Licensing Authority (**BLA**) on 12 July 2013;
 - 1.3. Had as its sole director and secretary from 18 May 2010 to 18 July 2021, Surinder Sarain (including as recorded under his former name, Surinder Kumar);
 - 1.4. Has recorded with the Australian Securities and Investments Commission (**ASIC**) as its registered office and principal place of business, 57 Hall Street, Ormond, VIC, 3204;
 - 1.5. Has conducted estate agency business as Ray White Werribee from premises at 15B, 167 Shaws Road, Werribee, VIC 3030 (**the business premises**);
 - 1.6. Is recorded on the electronic database for all licensed estate agents maintained by the BLA as trading, since 17 March 2017, as 361 Degrees Real Estate Caroline Springs;
 - 1.7. Ceased to be a Ray White Franchisee on or about 18 May 2016;
 - 1.8. While trading as Ray White Werribee, held accounts in relation to its estate agency business which included the following trust accounts with the Westpac Banking Corporation:

1.8.1. BSB 033-689 Account Number 408065 with the Account Name "Ray White Werribee Sales Trust" (**the Sales Trust Account**);

1.8.2. BSB 033-689 Account Number 408073 with the Account name "Ray White Werribee Rental Trust" (**the Rental Trust Account**).

(collectively, **the Trust Accounts**)

1.9 Was sold to AMR Realtor Pty Ltd (ABN 98 843 266 463) on 2 July 2021.

2. Surinder Sarain:

2.1. Was the sole director and Officer in Effective Control (**OIEC**) of The Sarain from 18 May 2010 to 18 July 2021 ;

2.2. Was issued with an individual estate agent's licence by the BLA (Licence No 070757L) on 10 March 2009.

RELEVANT LEGISLATION

3. The EAA

3.1. Section 16(4)(a)(i) of the EAA provides that an estate agent must not appoint a person to act as an agent's representative unless the agent, or, in the case of a corporation, the OIEC of the estate agency business of the corporation has been given a copy of the certificate from the Chief Commissioner of Police or the Australian Crime Commission that indicates that the person is not ineligible to be an agent's representative under subsection (1)(c) and that is not more than six months old or is more than six months old but that is accompanied by a statutory declaration of the person stating that they have not been found guilty of any disqualifying offence.

3.2. Section 35(6) of the EAA provides that every estate agent shall, within seven days after they employ and within seven days after ceasing to employ any agent's representative, in writing notify the Registrar of such employment or cessation of employment and the Registrar shall enter the fact in the register.

- 3.3. Section 42(4) of the EAA provides that any estate agent who publishes or permits or authorises to be published as part of an advertisement any false or misleading statement or representation concerning any property or business which is or is stated or represented to be for sale shall be guilty of an offence.
- 3.4. Section 47C(2) of the EAA provides that in making any statement while marketing the residential property, the agent or representative must not state as a selling price or likely selling price of the residential property a price that is –
- 3.4.1. less than the estimated selling price contained in the engagement or appointment;
or
- 3.4.2. if the estimated selling price contained in the engagement or appointment is expressed as a price range – less than the lower limit of that range.
- 3.5. Section 49A(1)(c)(ii) of the EAA provides that an estate agent must not obtain, or seek to obtain, any payment from a person in respect of work done by, or on behalf of, the agent or in respect of any outgoings incurred by the agent unless the engagement or appointment contains – if a fee is to be calculated on a percentage basis – a statement of that fee expressed as both a percentage and as the dollar amount that would be payable on the reserve price or any other relevant amount set out in the engagement or appointment.
- 3.6. Section 63(1)(a) of the EAA provides that every estate agent shall keep full and accurate accounting records so as to show the true position of all monies received by them and required to be dealt with in accordance with section 59 EAA and any disbursements or disposal of, or dealing with, those monies.
- 3.7. Section 63(1)(c) of the EAA provides that every estate agent shall correctly balance the accounts at the end of each month.
- 3.8. Section 29B of the EAA provides that that OIEC of the estate agency business of a corporation has particular duties, including:
- 3.8.1. per section 29B(2)(c), controlling and supervising any estate agency business carried on by the agent or for which the OIEC is responsible;
- 3.8.2. per section 29B(2)(d), taking reasonable steps to ensure that any estate agents, agents' representatives or other employees of the business comply with the provisions

of the EAA, the *Sale of Land Act 1962* and any other laws relevant to the conduct of the business while they are engaged in that business; and

3.8.3. per section 29B(2)(e), establishing procedures designed to ensure that the business is conducted in accordance with the law and good estate agency practice.

4. *The Estate Agents (General, Accounts and Audit) Regulations 2008 (the Audit Regulations)*

4.1. Regulation 25(1) of the Audit Regulations provides that an estate agent must not transfer money between accounts in the trust ledger unless the agent is entitled to the transfer the money for that purpose.

4.2. Regulation 25(3) of the Audit Regulations provides that an entry in a transfer journal must include the following particulars:

4.2.1. the date of the transfer;

4.2.2. the amount transferred to and from each trust ledger account;

4.2.3. the names of all trust ledger accounts to be debited or credited, including identifying references;

4.2.4. particulars sufficient to identify the purpose for which the money was transferred.

5. *The Estate Agents (Professional Conduct) Regulations 2008 (the Conduct Regulations)*

5.1. Regulation 11 of the Conduct Regulations provides that an estate agent must at all times act fairly and honestly and to the best of the agent's knowledge and ability in the performance of the agent's functions as an estate agent.

5.2. Regulation 13(1) of the Conduct Regulations provides that an estate agent must exercise all due skill, care and diligence in performing the agent's functions as an estate agent.

5.3. Regulation 13(2) of the Conduct Regulations provides that an estate agent must not engage in conduct that is unprofessional or detrimental to the reputation of interests of the estate agency industry.

5.4. Regulation 15 of the Conduct Regulations provides that an estate agent must make all reasonable enquiries to ascertain the information relevant to a service or transaction relating to the estate agency practice to be provided or performed by the estate agent.

CONSUMER AFFAIRS VICTORIA INVESTIGATION

December 2015 Inspection

6. On 9 December 2015, Michael George Scott, a duly appointed and authorised inspector with Consumer Affairs Victoria (CAV) (**Inspector Scott**) attended at The Sarain's business premises assisted by CAV Inspector Sacha Williams, to conduct a compliance monitoring inspection pursuant to Section 70J of the EAA under CAV's state-wide compliance inspection program [the 'December 2015 inspection']. Subsequently, on 6 January 2016, Inspector Scott issued a statutory notice on The Sarain under section 70C of the EAA (**the Scott Statutory Notice**), seeking further information regarding 10 property files identified in relation to possible contraventions of the Act. The Scott Statutory Notice also sought a list of all persons employed by the company during the period 1 January 2015 to 6 January 2016. Inspector Scott received a response to the Scott Statutory Notice on 29 January 2016.

March 2016 Inspection

7. Further inspections by CAV were carried out over a period from late February to early March 2016. On 25 February 2016 Georgia Patras, a duly appointed and authorised CAV inspector, assigned to make further enquiries in this matter, issued a statutory notice on The Sarain pursuant to section 70C of the EAA (**the Patras Statutory Notice**). The Patras Statutory Notice required the production of various documents at The Sarain's business premises at an inspection on 7 March 2016, which inspection and statutory notice Inspector Patras had arranged and foreshadowed to The Sarain (via communications with the OIEC, Mr Sarain).

8. On 7 March 2016 Inspectors Dan and Patras, assisted by CAV officer Jaqueline Barot, attended the business premises at 11.00am as arranged with Mr Sarain to (in the case of Inspector Patras, assisted by Ms Barot, conduct inspection of the estate agent's business) and, in the case of Inspector Dan, to review trust account matters. Inspector Patras was provided for inspection, 16 employee files of The Sarain.

CONTRAVENTIONS

Section 16(4)(a)(i) EAA: Eligibility – Police Certificate

Undertaking – The Sarain Pty Ltd.

9. At all relevant times, section 16(4)(a)(i) provided that an estate agent must not appoint a person to act as an agent's representative unless the agent, or, in the case of a corporation, the officer in effective control of the estate agency business of the corporation, has been given a copy of a certificate from the Chief Commissioner of Police or Crim Trac (**Required Police Certificate**) indicating that the person is not ineligible to be an agent's representative on the basis of having been convicted or had found proven against them, within the last 10 years, any offence involving fraud, dishonesty, drug trafficking or violence which was punishable by imprisonment for 3 months or more. Failure to comply is a criminal offence.

10. CAV's investigation established that this provision has been breached in relation to the following people employed by The Sarain as agent's representatives:

- 10.1. Courtney Leitch
- 10.2. Haseeb Syed
- 10.3. May Mulipola
- 10.4. Reet Sarain
- 10.5. Rahul Singh
- 10.6. Uma Sarain

Section 35(6) EAA: Notification to Registrar of (cessation of) employment of agent's representative in writing within seven days after employing or ceasing to employ agent's representative

11. Section 35(6) provides that every estate agent shall, within 7 days after employing and within 7 days after ceasing to employ any agent's representative, notify the BLA Registrar of such employment or cessation of employment. An agent who fails to comply with this requirement commits an offence.

12. CAV's investigation showed that The Sarain and Mr Surinder Sarain breached this provision in relation to the following employees:

- 12.1. Reet Sarain
- 12.2. Ashley Latham
- 12.3. Kamal Bagga
- 12.4. Adam Bindra
- 12.5. Jamal Mohammed

Section 42(4) EAA: Representations in advertising

13. Section 42(4) provides that any estate agent who publishes or permits or authorises to be published as part of an advertisement any false or misleading statement or representation concerning any property or business which is stated or represented to be for sale shall be guilty of an offence.
14. CAV's investigation showed that The Sarain and Mr Surinder Sarain breached this provision in relation to the following properties:
 - 14.1. 698 Armstrong Road, Wyndham Vale
 - 14.2. 133a Mossfiel Drive, Hoppers Crossing
 - 14.3. 10 Pillar Road, Wyndham Vale

Section 47 C(2) EAA: Estimated selling price

15. Section 47 C(2), provides that, in making any statement while marketing real estate in respect of which a written engagement or appointment to sell the real estate is held by the estate agent, the agent must not state, as the estimate of the selling price of the real estate, a price that is less than the agent's estimate of the selling price of the real estate or, in the case of a price range, less than the lower limit of that range, as stated in the engagement or appointment.
16. CAV's investigation showed that The Sarain and Mr Surinder Sarain breached this provision in relation to the following properties:
 - 16.1. 13 Finch Road, Werribee South
 - 16.2. 40 Kiely Avenue, Werribee
 - 16.3. 2 Locksley Drive, Truganina
 - 16.4. 22 Dalmany Avenue, Point Cook
 - 16.5. 27 Kingsfield Way, Truganina
 - 16.6. 1 Waterways Boulevard, Williams Landing
 - 16.7. 36 Purchas Street, Werribee
 - 16.8. 10 Wyena Court, Hoppers Crossing
 - 16.9. 1156 Ison Road, Wyndham Vale
 - 16.10. 20 Cumming Drive, Hoppers Crossing
 - 16.11. 104 Ribbleside Avenue, Wyndham Vale

Section 49A(1)(c) EAA: Disclosure of information about commission

17. Section 49(1)(c) of the EAA requires the signed written engagement or appointment held to contain details of the commission and outgoings that have been agreed and, if a fee is to be calculated on a percentage basis, a statement of that fee expressed as both a percentage and as the dollar amount that would be payable on the reserve price or any other relevant amount set out in the engagement or appointment.
18. CAV's investigation showed that The Sarain and Mr Surinder Sarain breached this provision in relation to the following properties for which The Sarain entered into Exclusive Sales Authorities with the vendors:
 - 18.1. 11 Safari Drive, Tarneit
 - 18.2. 20 Cumming Drive, Hoppers Crossing
19. The Exclusive Sales Authorities did not comply with the EAA requirements for disclosure of commission referable to the retainer.

Section 63(1)(a) EAA: Full and accurate trust accounting records

20. Section 63(1)(a) requires that estate agents keep full and accurate trust accounting records, to show the true position of all monies received by the business.
21. At the March 2016 inspection, CAV's Inspector Dan was provided with copies of The Sarain's reconciliation statements for, respectively, January 2016 and February 2016 for The Sarain's Trust Accounts as well as an "Adjustments" document, itemising adjustments between the Rental Trust Account and The Sarain's corresponding rental trust records up to 28 February 2016 (**the Adjustments Report**).
22. The Adjustments Report referred to in the preceding paragraph recorded 22 adjustment items from 16/01/2014 to 23/12/2015 (i.e. all items over a year old and some nearly two years old) totalling negative \$15,299.10. These items had not been investigated and cleared as at 28 February 2016.
23. The adjustments included items which were variously described as "unknown rent", "no ref" and "misc (bank under)". The obligation to ensure that that entries in the estate agent's trust account records are complete and accurate is on the estate agent.

24. The Rental Trust account reconciliation statement for January 2016 (and subsequently examined by Inspector Dan) was neither signed nor dated by Mr Sarain in his capacity as a licensed working director or OIEC within 14 days after the end of the preceding month.

Section 63(1)(c) EAA: Balance of accounts at the end of the month

25. Section 63(1)(c) requires estate agents to correctly balance their trust accounts at the end of the month.
26. The monthly trust account reconciliation statement for January 2016 for the Rental Trust Account as produced to Inspector Dan at the March 2016 inspection was not based on the balance as at 31 January 2016. It was based instead on the balance of the rental trust account as at 1 February 2016. The January reconciliation statement states, "Bank Statement Balance as at 30/01/2016" and proceeds to then refer to an amount which is the bank balance as at 1 February 2016.

Regulation 25(1) Audit Regulations: Completion and retention of trust account reconciliation statement

27. Regulation 25(1) of the Audit Regulations, relevantly, provided that an estate agent must complete and keep a trust account reconciliation statement at the end of each month which:
- a) ascertains the balance of the trust journals;
 - b) reconciles the balance of the agent's trust account at an AFI with the balance of the agent's trust cash journals; and
 - c) reconciles the balances of the accounts of the agent's trust ledger with the balance of the agent's trust cash journal.
28. The Sarain contravened regulation 25(1) by utilising the balance of the Rental Trust Account as at 1 February 2016 for the January 2016 reconciliation statement for the Rental Trust Account, which otherwise refers to "Bank Statement Balance as at 30/01/16.

Regulation 25(3) Audit Regulations: Verifying that trust account reconciliation statement is true and accurate

29. Regulation 25(3) relevantly, provided that, in the case of an estate agent which is a corporation, that a licensed director or the OIEC must verify that the trust account reconciliation statement is true and accurate within 14 days after the end of the preceding month.

30. The Rental Trust account reconciliation statement for January 2016 produced to Inspector Dan at the March 2016 inspection (and subsequently examined by Inspector Dan) was neither signed nor dated by Mr Sarain in his capacity as a licensed working director or OIEC (nor by any other licensed working director of The Sarain) within 14 days after the end of the relevant preceding month.

Section 29B EAA: Duties of Agents and Officers in Effective Control [Surinder Sarain]

31. Section 29B includes requirements for that an Officer in Effective Control to:
 - 31.1. properly control and supervise the estate agency business for which they are responsible;
 - 31.2. take reasonable steps to ensure that any estate agents and agent's representatives or other employees comply with the EAA and regulations and other laws applicable to the conduct of the estate agency business;
 - 31.3. establish procedures designed to ensure that the business is conducted in accordance with the law and good agency practice.
32. The matters referred to in the preceding paragraphs 1 to 30 above are repeated here.
33. In addition to the matters referred to in the proceeding paragraphs (1-30), CAV's investigation also revealed one matter of concern regarding a property located at 59 Ronald Road, Truganina (the property). Following an execution of the contract of sale for the property, several instances of miscommunication between the Sarain and the vendor and a failure of the Sarain's employees to adequately comply with their duties under the Act were identified by CAV throughout the course of their investigation.
34. The investigation further revealed that The Sarain had failed to notify the debtor of a non-receipt of deposit and had also failed to obtain information that was relevant to a service or transaction.
35. CAV's investigation determined that, as a result of the contravening conduct identified, Surinder Sarain as the Officer in Effective Control of The Sarain Pty Ltd had breached the requirements under section 29B.

Regulation 11 Conduct Regulations: Acting to best of knowledge and ability

Regulation 13(1) Conduct Regulations: Exercising all due skill, care and diligence

Regulation 13(2) Conduct Regulations: Conduct that is unprofessional or detrimental to the reputation of the estate agency industry

36. Regulation 11 includes requirements for an estate agent to at all times act to the best of the agent's knowledge and ability in the performance of the agent's functions as an estate agent.
37. Regulation 13(1) requires an estate agent to exercise all due skill, care and diligence in performing the agent's functions as an estate agent.
38. Regulation 13(2) states that an estate agent must not engage in conduct that is unprofessional or detrimental to the reputation or interest of the estate agency industry.
39. The matters referred to in the preceding paragraphs 1 to 30 are repeated here.
40. CAV's investigation determined that, as a result of the contravening conduct identified, Surinder Sarain as the Officer in Effective Control of The Sarain Pty Ltd and The Sarain Pty Ltd had breached their professional conduct regulations pursuant to regulation 11, 13(1) and 13(2).

Residential Tenancy Bonds

41. Additionally, a review by CAV inspectors of information obtained from the Residential Tenancies Bond Authority (RTBA) on 3 November 2016 and various rental files made available for inspection by CAV inspectors on 17 February 2017 at the offices of Jenni International Pty Ltd trading as Stockdale and Leggo Werribee (the company that had acquired the rent roll of The Sarain) identified that a rental bond had not been lodged by The Sarain/RWW for thirteen properties in respect of which it had been the managing agent and entered into an agreement with the tenant requiring the payment of a bond, raising issues as to contravention of The Sarain's tenancy obligations.
42. The relevant properties as referred to in paragraph 41 above were:
 - 42.1. 1 Colliet Place, Hoppers Crossing
 - 42.2. 13 Brockwell Crescent, Wyndham Vale
 - 42.3. 5 Quartz Way, Tarneit
 - 42.4. 1 Sunbird Crescent, Hoppers Crossing
 - 42.5. 24 Elderwood Avenue, Truganina

- 42.6. 33 Yanga Avenue, Tarneit
- 42.7. 15 Jabiru Court, Werribee
- 42.8. 3A Federal Drive, Wyndham Vale
- 42.9. 7 Grackle Crescent, Williams Landing
- 42.10. 98 Shaws Road, Werribee
- 42.11. 134 Harmony Drive, Tarneit
- 42.12. 150 Derrimut Road, Hoppers Crossing
- 42.13. 39 William Wright Wynd, Hoppers Crossing

Regulation 13(5) Conduct Regulations: Informing debtor of non-receipt of deposit

Regulation 15 Conduct Regulations: Ascertaining information relevant to a service or transaction

- 43. Regulation 13(5) of the Conduct Regulations provides that an estate agent acting for the vendor must immediately inform the seller if a deposit has not been received, contrary to the terms of the contract.
- 44. Regulation 15 of the Conduct Regulations provides that an estate agent must make all reasonable enquiries to ascertain the information relevant to a service or transaction relating to the estate agency practice to be provided or performed by the estate agent.
- 45. The matters referred to in the preceding paragraphs 33 to 34 are repeated here.
- 46. CAV's investigation determined that, as a result of the contravening conduct identified, Surinder Sarain as the Officer in Effective Control of The Sarain Pty Ltd The Sarain Pty Ltd had breached their professional conduct regulations pursuant to regulation 13(5) and 15.

PAST COMPLIANCE

- 47. A letter was sent to Surinder Sarain dated 21 November 2013, in his capacity as OIEC of The Sarain trading as Ray White Werribee as a reminder of obligations under sections 35(6) and 35(7) of the EAA regarding the requirement of estate agent to notify the Registrar of the Business Licensing Authority, with seven days of employing and seven days after ceasing to employ, any agent's representative.
- 48. A warning letter had been sent to Mr Sarain in November 2014 in his capacity as OIEC of The Sarain trading as Ray White Werribee regarding a qualified trust account audit report received for the company for the 2014-2015 financial year which report had noted that Regulation 25 of

the Audit Regulations had been breached as the majority of trust account reconciliation statements were not reconciled on the last day of the end of the month.

CURRENT COMPLIANCE

49. Mr Sarain, in acknowledging oversights in respect of compliance, engaged James Dalton of Neil Dalton Consulting in 2017 to undertake external audits of his files. As a result, Mr Dalton has issued Mr Sarain with audit reports for the 2017 – 2018 and 2018 – 2019 financial years. He provided an unqualified opinion for those years.
50. Mr Sarain submitted a qualified trust account audit report for the 2019 – 2020 financial year. The Director notes that an educational letter was issued to Mr Sarain as a consequence of the report.

UNDERTAKING

51. Mr Surinder Sarain admits to the contraventions raised at paragraphs 9 – 46.
52. Mr Surinder Sarain undertakes to the Director that he will not be in effective control of the real estate business of a corporation conducting a real estate business in Victoria for a period of two (2) years from the date of the execution of the undertaking.
53. Mr Surinder Sarain undertakes to the Director that he is not to be involved in the day to day management of an estate agency business in Victoria, and, in effect, is not to act as a real estate agent as a sole trader, for a period of two (2) years from the date of the execution of the undertaking. During the two (2) year period, Mr Sarain is permitted to hold the positions of real estate agent, sales representative, agents representative, property manager or sales executive, subject to this employment occurring at a business in which Mr Sarain is supervised by an Officer in Effective Control.

Compliance training

54. Mr Surinder Sarain undertakes to the Director that he will, at his own expense, within 12 months of the date of the execution of the undertaking, undertake at least 12 continuing professional development courses of any duration administered by the Real Estate Institute of Victoria (REIV) and provide to the Director within seven (7) days of the completion of those courses evidence of his completion of them, by way of a signed affidavit.

Contribution to the Victorian Consumer Law Fund

55. Mr Surinder Sarain personally undertakes to the Director that within 90 days of the commencement of this undertaking, Mr Surinder Sarain will pay the sum of \$2,500 to the Victorian Consumer Law Fund, created under section 134 of the *Australian Consumer Law and Fair Trading Act 2012*.

COMMENCEMENT

56. This Undertaking comes into effect when:
- (a) The Undertaking is executed by Mr Surinder Sarain; and
 - (b) The Director accepts the Undertaking so executed.

CONCLUSION/DURATION

57. This Undertaking remains in effect for a period of 24 months from its commencement.

EXECUTION

Signed by:


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Mr Surinder Sarain

In the presence of: Witness


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Print name:

VIKAS SHEORAN

Dated: day 22 month 11 2021

Accepted by:


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Brayden Hayes, Solicitor on behalf of the Director of Consumer Affairs Victoria

Dated: day 23 month 11 2021